

April 21, 2022

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: MB Docket No. 14-261

Dear Ms. Dortch:

This letter reports that, on April 19, 2022, the Chairs and Vice Chairs of the ABC Television Affiliates Association, the CBS Television Network Affiliates Association, the FBC Television Association, and the NBC Television Affiliates (the “Four Affiliates Associations”), along with their counsel, met by videoconference with Commissioner Nathan Simington, Adam Cassidy, Media Advisor, and Michael Sweeney, Confidential Assistant.

In that meeting, the representatives of the Four Affiliates Associations discussed the state of the video programming marketplace, with an emphasis on local news and information programming and the essential role played by local television broadcasters. The representatives of the Four Affiliates Associations explained that local stations remain Americans’ most trusted source for accurate, factual, unbiased news and emergency information, the importance of which has been reinforced during the COVID-19 pandemic. Local broadcasters’ service to the public continues unabated, even as shifts in the video programming ecosystem have challenged local broadcasters in ways that could not have been anticipated in 2014, when the Commission opened the instant docket to consider whether to classify online video distributors or “virtual” MVPDs (“vMVPDs”) as multichannel video programming distributors (“MVPDs”) subject to the Commission’s retransmission consent rules.

The Four Affiliates Associations representatives emphasized that marketplace shifts over the last seven years have threatened both of the key revenue streams—advertising and subscription fees—upon which broadcasters rely to produce local news, emergency information, and other locally-focused programming and to operate their businesses.

With respect to advertising revenues, the Chairs and Vice Chairs described the growing dominance of Big Tech companies like Google, Facebook, and Amazon in the advertising marketplace and the resulting declines in ad revenues available to local broadcasters. These large tech platforms have dramatically changed how many Americans find and consume news content. Today, significant numbers of Americans regularly get their news from entities such as Facebook and YouTube, although much of that news content is produced by local broadcasters, whose

mission—unlike that of Big Tech—is to serve their local communities. As tech platforms attract growing numbers of news consumers, advertisers unsurprisingly turn to Facebook, Google, and Amazon, rather than local broadcasters, to reach those audiences, and the Big Tech companies capture an ever greater share of U.S. advertising revenues. Still, the Big Tech companies do not fairly compensate the local broadcasters who produce the news content that draws viewers to their platforms. The representatives of the Four Affiliates Associations observed that Big Tech platforms should compensate local broadcasters fairly for distribution of the broadcasters' valuable news content on their platforms, and they explained that broadcasters are advocating on that issue before Congress.

The representatives of the Four Affiliates Associations discussed the lack of regulatory parity between broadcasters and Big Tech companies, citing as one example the uneven playing field that exists between them with respect to political advertising, a particularly significant issue in the current media environment. The representatives pointed out that broadcasters are subject to numerous political advertising rules—among them, disclosure requirements and online public inspection file recordkeeping obligations. Tech platforms, by contrast, are not required to—and do not—adhere to the Commission's political advertising rules intended to ensure transparency and accountability. As a result, although Big Tech and other digital platforms capture billions of dollars in political advertising in each election cycle, they are not bound by the rules intended to protect the safety and integrity of our election process.

With respect to television broadcasters' other revenue source—subscription fees—the representatives of the Four Affiliates Associations reported on the growth of virtual MVPDs (e.g., YouTube TV, DIRECTV Stream, and Hulu+ Live TV) and the subscriber erosion experienced by some traditional MVPDs. Today, some 15-20% of live television viewers subscribe to vMVPDs, and that number is expected to rise to more than 30% within the next several years. The shift has been driven in large part by the decision by vMVPDs to mimic traditional MVPDs by delivering live, linear multichannel programming to their subscribers. However, vMVPDs are not subject to the retransmission consent rules. Unlike negotiations with traditional MVPDs where local television Affiliates negotiate directly for the carriage of their FCC-licensed signals, the national Big Four broadcast networks have asserted near-total control over carriage negotiations with vMVPDs. Time and again, the Four Affiliates Associations representatives explained, a Big Four network (or, more accurately, its parent entity) will fully negotiate an agreement with a given vMVPD for carriage of network-owned stations as well as network-owned cable channels and other less popular programming—without any meaningful input from its non-owned Affiliate stations. After such an agreement is all-but finalized, the Big Four network will then present the agreement to its local Affiliated stations in what generally amounts to a “take it or leave it” deal that the Affiliate must accept if it is to be carried on the virtual MVPD at issue.

Because the Commission's retransmission consent rules do not currently apply to vMVPDs, the Big Four networks control negotiations with virtual MVPDs. The Affiliated stations are at the mercy of agreements that they have no say in negotiating. The December 2021 impasse between YouTube TV and ABC/Disney illustrates one of the many problems with the current framework: all ABC-Affiliated stations nationwide were simultaneously removed from YouTube

TV during the impasse, and local Affiliates had no insight into the YouTube TV/Disney negotiations, including if or when their signals and local content would be restored to YouTube TV subscribers. The Four Affiliates Associations representatives explained that local stations must be able to negotiate directly with virtual MVPDs (as they do with traditional MVPDs under the retransmission consent rules) in order to negotiate fair compensation and non-economic terms reflective of the true value of their local programming, which they could then reinvest in the production and distribution of local news and other local programming.

The Four Affiliates Associations also noted that unless and until vMVPDs are defined as MVPDs, the vMVPDs are not required to adhere to the numerous Commission rules designed to protect viewers. For example, vMVPDs are not subject to the Commission's rules on accessibility, emergency programming, EAS, or equal employment opportunities. By expanding the definition of MVPD to include vMVPDs, the Commission would ensure that viewers who increasingly turn to online sources have the same access to closed captions, emergency alerts, and the numerous other services that viewers rely on when watching the same programming via traditional MVPDs.

On that point, the representatives of the Four Affiliates Associations asserted that the Commission has the authority under the Communications Act to treat vMVPDs as MVPDs subject to the statutory retransmission consent requirements set forth in Section 325(b). The question whether vMVPDs fall within the definition of MVPD for purposes of the Commission's retransmission consent rules is a matter committed to the Commission's discretion, and the Commission should exercise that discretion to treat vMVPDs as MVPDs with respect to retransmission consent. (The representatives of the Four Affiliates Associations also note that Orders issued by the Commission in 2019 and by the Media Bureau in 2020 found that vMVPDs are "comparable," and thus provide effective competition, to facilities-based MVPDs for purposes of the rate regulation provisions of the Communications Act.) In her separate statement in the 2014 *Notice of Proposed Rulemaking*, then-Commissioner Rosenworcel said that the Commission "ha[s] the authority to update [its] rules to reflect the fact that video services are being offered over new platforms . . . [and] the authority to interpret the statutory term multichannel video programming distributor . . . to include providers of multiple streams of linear, over-the-top television." The representatives of the Four Affiliates Associations urged the Commission to exercise its Section 325(b) authority to do precisely that: to update its rules to bring virtual MVPDs within the retransmission consent regime. They reiterated that the need for Commission action to make such updates is even more pressing in the current media environment than it was more than seven years ago, when the Commission first opened the vMVPD docket.

Finally, the representatives of the Four Affiliates Associations discussed other challenges to the Network-Affiliate relationship, including competitive challenges from Network-owned direct-to-consumer platforms (e.g., Paramount+, Peacock, and Hulu). Those platforms often feature very desirable, unique content, and also frequently carry the same Network programming that, historically, appeared exclusively on broadcast stations, including local Affiliates. The Four Affiliates Associations representatives explained that local Affiliates' loss of valuable exclusivity hinders their ability to negotiate fair compensation for retransmission of their signals.

To the extent that the representatives of the Four Affiliates Associations discussed other matters related to pending proceedings, they pointed to and relied upon previous public filings with the Commission in the form of either Comments or Reply Comments in the docket referenced above.

A list of the participants in the April 19, 2022 meeting is attached.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Mark J. Prak", with a long, sweeping horizontal line extending to the left.

Mark J. Prak

LIST OF MEETING PARTICIPANTS (April 19, 2022)

FCC Officials:

Commissioner Nathan Simington

Adam Cassady, Media Advisor

Michael Sweeney, Confidential Assistant

Representatives of the ABC Television Affiliates Association:

Chair Mike Meara, News-Press & Gazette Co.

Vice Chair Dean Littleton, The E.W. Scripps Company

Representatives of the CBS Television Network Affiliates Association:

Chair Lynn Beall, TEGNA Inc.

Vice Chair Dan York, Cox Media Group

Representatives of the FBC Television Affiliates Association:

Chair Mike Vaughn, Nexstar Media Group, Inc.

Vice Chair Paul Curran, Cox Media Group

Representatives of the NBC Television Affiliates:

Chair Emily Barr, Graham Media Group

Vice Chair Eric Meyrowitz, Hearst Television

Counsel to the CBS Network Television Affiliates Association and the FBC Television Affiliates Association:

John Feore, Robert McDowell, and Henry Wendel, Cooley LLP

Counsel to the ABC Television Affiliates Association and the NBC Television Affiliates:

Mark Prak, Julia Ambrose, and Tim Nelson, Brooks, Pierce, McLendon, Humphrey & Leonard, LLP